

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)	Case No. 1:21-cv-00135
)	
<i>In re Clearview AI, Inc. Consumer Privacy</i>)	Judge Sharon Johnson Coleman
<i>Litigation</i>)	
)	Magistrate Judge Maria Valdez

JOINT STATUS REPORT

Pursuant to the Court’s January 22, 2021 Order (the “Order”) (Dkt. 4), Plaintiffs David Mutnick, Mario Calderon, Jennifer Rocio, Anthony Hall, Shelby Zelonis Roberson, Chris Marron, Maryann Daker, Maria Broccolino, Sean Burke, James Pomerene, John McPherson, Dean John, Ryan Balfanz, Benjamin Jais, Rosemary Arias and Aimee Albrecht (collectively, “Plaintiffs”) and Defendants Clearview AI, Inc., Hoan Ton-That, Richard Schwartz (collectively, “Defendants”)¹, by and through their respective counsel, submit this Joint Status Report.

1. Nature of the Case

A. Counsel of Record

<p><i>Plaintiff Mutnick</i></p> <p>Jon Loevy Arthur Loevy Mike Kanovitz Scott R. Drury (lead trial counsel) Elizabeth Wang Loevy & Loevy 311 N. Aberdeen, 3rd Floor Chicago, IL 60607</p>	<p><i>Plaintiffs Calderon and Rocio</i></p> <p>Scott A. Bursor (lead trial counsel) Joshua D. Arisohn Bursor & Fisher 888 Seventh Avenue New York, NY 10019</p> <p>Frank S. Hedin Hedin Hall Four Embarcadero Center Suite 1400 San Francisco, CA 94104</p>	<p><i>Plaintiff Hall</i></p> <p>Michael Drew (lead trial counsel) Neighborhood Legal LLC 20 N. Clark Street #3300 Chicago, IL 60602</p> <p>Michael Wood Community Lawyers LLC 20 N. Clark Street, Suite 3100 Chicago, IL 60602</p>
--	--	---

¹ Counsel for Defendants Wynndalco Enterprises, LLC; David Andalcio and Jose Flores have not yet filed an appearance and did not participate in this Joint Status Report.

<p><i>Plaintiffs Marron and Daker</i></p> <p>Gary Lynch (lead trial counsel) Carlson Lynch LLP 1133 Penn Ave, 5th Floor Pittsburgh, PA 15222</p> <p>Katrina Carroll Kyle A. Shamberg Nicholas R. Lange Carlson Lynch LLP 111 W. Washington, Ste 1240 Chicago, IL 60602</p>	<p><i>Plaintiff Roberson</i></p> <p>Steven T. Webster (lead trial counsel) Aaron S. Book Webster Book LLP 300 N. Washington, Ste. 404 Alexandria, VA 22314</p>	<p><i>Plaintiff Broccolino</i></p> <p>Lynda J. Grant The Grant Law Firm, PLLC 521 Fifth Ave, 17th Floor New York, NY 10175</p> <p>Melissa Emert Kantrowitz, Goldhamer & Graifman, P.C. 747 Chestnut Ridge Rd #200 Chestnut Ridge, NY 10977</p>
<p><i>Plaintiffs Burke, Pomerone and McPherson</i></p> <p>Joseph P. Guglielmo (lead trial counsel) Carey Alexander Scott+Scott Attorneys at Law LLP The Helmsley Bldg 230 Park Ave, 17th Floor New York, NY 10169</p> <p>Erin Green Comite Scott+Scott Attorneys at Law LLP 156 South Main Street P.O. Box 192 Colchester, CT 06415</p> <p>Amber L. Eck Alreen Haeggquist Aaron M. Olsen Ian Pike Haeggquist & Eck, LLP 225 Broadway, Suite 2050 San Diego, CA 92101</p>	<p><i>Plaintiffs John, Balfanz, Jais, Arias and Albrecht</i></p> <p>Scott Martin Steven M. Nathan Hausfeld LLP 33 Whitehall St., 14th Floor New York, NY 10004</p> <p>James Pizzirusso Hausfeld LLP 888 16th St. NW Suite 300 Washington, DC 20006</p> <p>Greg G. Gutzler DiCello Levitt Gutzler LLC 444 Madison Ave, 4th Floor New York, NY 10022</p> <p>Adam J. Levitt Amy E. Keller (lead trial counsel) DiCello Levitt Gutzler LLC Ten N. Dearborn Street, Sixth Floor Chicago, IL 60602</p> <p>Eric H. Gibbs David M. Berger Gibbs Law Group LLP 505 14th St, Suite 1110 Oakland, CA 94612</p>	<p><i>Defendants Clearview AI, Inc., Ton-That and Schwartz</i></p> <p>Lee Wolosky (lead counsel for Clearview AI, Inc.) Andrew J. Lichtman Jenner & Block LLP 919 Third Avenue New York, NY 10022</p> <p>Howard S. Suskin David P. Saunders Jenner & Block LLP 353 N. Clark Street Chicago, IL 60654</p> <p>Floyd Abrams (lead counsel for Ton-That and Schwartz) Joel Kurtzberg Cahill Gordon & Reindel LLP 32 Old Slip New York, NY 10005</p>

B. Nature of the Claims

This consolidated multidistrict litigation (“MDL”) arises out of common allegations that Defendant Clearview AI, Inc. (“Clearview”) improperly downloaded billions of photographs from the Internet and unlawfully collected, captured, obtained, distributed, sold, and profited from the biometric data or facial geometry extracted from those photographs of Plaintiffs and members of putative nationwide, Illinois and Virginia classes, as well as New York and California putative subclasses (in certain cases). Certain cases also allege that Defendants Ton-That and Schwartz (collectively with Clearview, the “Clearview Defendants”) engaged in the above-described unlawful conduct. Defendants Wynndalco Enterprises, LLC; Andalcio and Flores are alleged to have conspired with the Clearview Defendants to carry out the above-described unlawful activity.

The various complaints consolidated in this MDL assert claims for: (a) violations of Illinois’ Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*; (b) unjust enrichment; (c) violations of Plaintiffs’ and class members’ civil rights; (d) declaratory and/or injunctive relief; (e) violations of Illinois’ Consumer Fraud and Unfair Business Practices Act, 815 ILCS 505/1, *et seq.*; (f) conversion; (g) violations of Virginia Code § 8.01-40; (h) violations of the Virginia Computer Crimes Act; (i) violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (j) violations of California Commercial Misappropriation, Cal. Civ. Code § 3344(a); (k) violations of California common law (right of publicity); (l) violations of California’s constitutional right to privacy; and (m) intentional interference with contractual relations.

C. Major Legal and Factual Issues

- Whether Defendants acted unlawfully, as alleged in the various complaints;
- Whether Defendants committed violations of: (a) BIPA by, *inter alia*, failing to provide the requisite notice and to obtain the requisite consent before obtaining,

distributing and profiting from Plaintiffs' and putative class members' biometric data and failing to develop an appropriate written policy for establishing retention and deletion of biometric data; and (b) the various constitutional, common law, statutory and/or other state law norms alleged in the various complaints;

- Whether Defendants were unjustly enriched;
- Whether Plaintiffs are entitled to restitution, injunctive and declaratory relief, including whether the Clearview Defendants should be enjoined from continuing Clearview's data collection and other practices and required to delete the photographs and biometric data already obtained;
- Whether certain Defendants conspired to carry out the unlawful acts;
- Whether Plaintiffs suffered harm and are entitled to appropriate relief and/or statutory damages;
- Whether the Court should certify the various proposed classes and subclasses;
- Whether the Clearview Defendants are subject to the jurisdiction of Illinois courts; and
- Whether Plaintiffs' claims are precluded by constitutional, statutory or other defenses.

D. Relief Sought by Plaintiffs

- BIPA: The greater of actual damages or statutory damages of \$5,000 for each intentional or reckless violation or \$1,000 for each negligent violation;
- Commercial Misappropriation, Cal. Civ. Code §3344(a): The greater of actual damages or statutory damages of \$750 per violation;
- Actual damages resulting from Defendants' unlawful conduct;
- Punitive damages for violations of select state consumer statutes;
- Disgorgement of Defendants' unjust gains;
- Attorneys' fees, costs, and expenses; and
- Restitution, injunctive and declaratory relief.

E. General Status of the Case

On December 15, 2020, the Joint Panel on Multidistrict Litigation ("JPML") transferred nine putative class action cases pending in this District and the Southern District of New York to

this Court for consolidated pretrial proceedings. The Court set an initial status conference for January 26, 2021, which was stayed by agreement until February 5, 2021, pending the outcome of a February 2, 2021 mediation before Judge Wayne R. Andersen (Ret.). The mediation was unsuccessful. The next status conference is set for February 9, 2021.

The Court's Order requested that the parties notify the Court whether they have agreed to lead counsel for the respective sides. Plaintiffs' counsel have not reached a consensus on leadership. The parties respectfully request the Court set a briefing schedule for appointment of Lead Counsel under Fed. R. Civ. Pro. 23(g) as soon as reasonably practicable.

2. Pending Motions

There are no pending motions.

3. Proposed Discovery Schedule

A. Type of Discovery Required: Written and oral fact and expert discovery will be needed.

B. Proposed Schedule: The parties respectfully suggest that a proposed discovery schedule should be prepared and submitted after the Court appoints lead class counsel for Plaintiffs and Defendants.

4. Trial

The JPML consolidated these cases for pretrial proceedings only. Plaintiffs respectfully submit that depending on various pretrial issues, the various trials could last between seven and fourteen trial days. Defendants estimate the trial length to be five trial days.

5. Status of Settlement Discussions

The parties mediated before the Hon. Wayne R. Andersen (Ret.) on February 2, 2021. None of the cases settled. The parties do not request a settlement conference at this time.

6. Consent to Proceed Before the Magistrate Judge: The parties choose to proceed before an Article III judge.

Dated: February 4, 2021

Respectfully submitted:

<u>/s/ Scott R. Drury</u> SCOTT R. DRURY Jon Loevy Arthur Loevy Mike Kanovitz Scott R. Drury Elizabeth Wang Loevy & Loevy 311 N. Aberdeen, 3rd Floor Chicago, IL 60607 312.243.5900 drury@loevy.com <i>Counsel for Plaintiff Mutnick</i>	<u>/s/ Joshua D. Arisohn</u> JOSHUA D. ARISOHN Scott A. Bursor Joshua D. Arisohn Bursor & Fisher 888 Seventh Avenue New York, NY 10019 646.837.7150 jarisohn@bursor.com Frank S. Hedin Hedin Hall Four Embarcadero Center Suite 1400 San Francisco, CA 94104 415.766.3534 fhedin@hedinhall.com <i>Counsel for Plaintiffs Calderon & Rocio</i>
--	---

<p><u>/s/ Michael W. Drew</u> MICHAEL W. DREW</p> <p>Michael W. Drew Neighborhood Legal LLC 20 N. Clark Street #3300 Chicago, IL 60602 312.967.7220 mwd@neighborhood-legal.com</p> <p>Michael Wood Community Lawyers LLC 20 N. Clark Street, Suite 3100 Chicago, IL 60602 312.757.1880 mwood@communitylawyersgroup.com</p> <p><i>Counsel for Plaintiff Hall</i></p>	<p><u>/s/ Nicholas R. Lange</u> NICHOLAS R. LANGE</p> <p>Katrina Carroll Kyle A. Shamberg Nicholas R. Lange Carlson Lynch LLP 111 W. Washington, Ste 1240 Chicago, IL 60602 312.750.1265 nlange@carlsonlynch.com</p> <p>Gary Lynch Carlson Lynch LLP 1133 Penn Ave, 5th Floor Pittsburgh, PA 15222 412.322.9243 glynch@carlsonlynch.com</p> <p><i>Counsel for Plaintiffs Marron & Daker</i></p>
<p><u>/s/ Steven T. Webster</u> STEVEN T. WEBSTER</p> <p>Steven T. Webster Aaron S. Book Webster Book LLP 300 N. Washington, Ste. 404 Alexandria, VA 22314 888.987.9991 swebster@websterbook.com</p> <p><i>Counsel for Plaintiff Roberson</i></p>	<p><u>/s/ Lynda J. Grant</u> LYNDA J. GRANT</p> <p>Lynda J. Grant The Grant Law Firm, PLLC 521 Fifth Ave, 17th Floor New York, NY 10175 212.292.4441 lgrant@grantlawfirm.com</p> <p>Melissa Emert Kantrowitz, Goldhamer & Graifman, P.C. 747 Chestnut Ridge Rd #200 Chestnut Ridge, NY 10977 845.356.2570, X202 memert@kgglaw.com</p> <p><i>Counsel for Plaintiff Broccolino</i></p>

<p><u>/s/ Joseph P. Guglielmo</u> JOSEPH P. GUGLIELMO</p> <p>Joseph P. Guglielmo Carey Alexander Scott+Scott Attorneys at Law LLP The Helmsley Bldg 230 Park Ave, 17th Floor New York, NY 10169 212.223.6444 jguglielmo@scott-scott.com</p> <p>Erin Green Comite Scott+Scott Attorneys at Law LLP 156 South Main Street P.O. Box 192 Colchester, CT 06415 860.537.5537</p> <p>Amber L. Eck Alreen Haeggquist Aaron M. Olsen Ian Pike Haeggquist & Eck, LLP 225 Broadway, Suite 2050 San Diego, CA 92101 619.342.8000 aaron@haelaw.com</p> <p><i>Counsel for Plaintiffs Burke, Pomerone & McPherson</i></p>	<p><u>/s/ James Pizzirusso</u> JAMES PIZZIRUSSO</p> <p>James Pizzirusso Hausfeld LLP 888 16th St. NW Suite 300 Washington, DC 20006 202.540.7200 jpizzirusso@hausfeld.com</p> <p>Scott Martin Steven M. Nathan Hausfeld LLP 33 Whitehall St., 14th Floor New York, NY 10004 646.357.1100</p> <p>Greg G. Gutzler DiCello Levitt Gutzler LLC 444 Madison Ave, 4th Floor New York, NY 10022 646.933.1000</p> <p>Adam J. Levitt Amy E. Keller DiCello Levitt Gutzler LLC Ten N. Dearborn Street, Sixth Floor Chicago, IL 60602 312.214.7900</p> <p>Eric H. Gibbs David M. Berger Gibbs Law Group LLP 505 14th St, Suite 1110 Oakland, CA 94612 510.350.9713</p> <p><i>Counsel for Plaintiffs John, Balfanz, Jais, Arias & Albrecht</i></p>
---	---

<p><u>/s/ Lee Wolosky</u> LEE WOLOSKY</p> <p>Lee Wolosky Andrew J. Lichtman Jenner & Block LLP 919 Third Avenue New York, NY 10022 212.891.1600 lwolosky@jenner.com</p> <p>Howard S. Suskin David P. Saunders Jenner & Block LLP 353 N. Clark Street Chicago, IL 60654 312.222.9350</p> <p>Floyd Abrams Joel Kurtzberg Cahill Gordon & Reindel LLP 32 Old Slip New York, NY 10005 212.701.3000</p> <p><i>Counsel for Defendants Clearview AI, Inc.; Ton-That & Schwartz</i></p>	
--	--

CERTIFICATE OF SERVICE

I, Scott R. Drury, an attorney, hereby certify that, on February 4, 2021, I filed the foregoing document using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Scott R. Drury

SCOTT R. DRURY